

E-FILED - 3/19/07

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JOSEPH DIGGS,

Plaintiff,

v.

CHERYL PLILER, Warden,
and THE ATTORNEY GENERAL OF THE
STATE OF CALIFORNIA

Defendant.

No. C-99-20659 RMW

ORDER GRANTING IN PART REQUEST
FOR CERTIFICATE OF APPEALABILITY
AND ALLOWING PETITIONER TO
PROCEED *IN FORMA PAUPERIS*

[Re Docket Nos. 32, 33]

Joseph Diggs petitions for a certificate of appealability under 28 U.S.C. § 2253(c) as to all issues raised in his petition for a writ of habeas corpus which was denied.

An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding in which the detention arises from a state court judgment without the issuance of a certificate of appealability. 28 U.S.C. § 2253. Such certificate may issue only if the applicant has made a substantial showing of the denial of a constitutional right. *Id.* The court must indicate which specific issue or issues satisfy the showing required. *Id.* In this case, the court finds that Diggs has made a substantial showing of the denial of a constitutional right on his claims of *Bruton* error and alleged ineffective assistance of counsel with respect to that claim. Petitioner's other claims do not

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1 merit a certificate of appealability as they are without merit for the reasons given in the order
2 denying the petition. The clerk shall transmit the file, including a copy of this order, to the Court of
3 Appeals. *See* Fed. R. App. P. 22(b).

4 Diggs' request that this court allow him to proceed on appeal *in forma pauperis* is granted.

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6 DATED: 3/19/07



RONALD M. WHYTE
United States District Judge

1 **THIS SHALL CERTIFY THAT A COPY OF THIS ORDER WAS PROVIDED TO:**

2 **Counsel for Petitioner:**

3 Marc Zilversmit
4 523 Octavia St.
5 San Francisco, CA 94102

6 Nina Wilder
7 Weinberg & Wilder
8 523 Octavia St.
9 San Francisco, CA 94102

10 **Counsel for Respondents:**

11 Gregory A. Ott
12 California State Attorney General's Office
13 455 Golden Gate Ave., Suite 11000
14 San Francisco, CA 94102

15 Counsel are responsible for distributing copies of this order to co-counsel, as necessary.

16 Date: 3/19/07



Chambers of Judge Whyte

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